

SENATE BILL NO. 4

INTRODUCED BY D. GRIMES

BY REQUEST OF THE LAW, JUSTICE, AND INDIAN AFFAIRS INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT DURING A PROBATIONARY PERIOD, EMPLOYMENT MAY BE TERMINATED FOR ANY REASON ~~CONSIDERED SUFFICIENT BY THE TERMINATING PARTY~~ OR FOR NO REASON; CREATING A PRESUMPTIVE PROBATIONARY PERIOD; SPECIFYING THE STATUS OF TEMPORARY EMPLOYEES; CLARIFYING THAT THE TERMINATION OF NONPROBATIONARY EMPLOYMENT MUST BE FOR CAUSE; AMENDING SECTIONS 39-2-902, 39-2-904, AND 39-2-905, MCA; AND REPEALING SECTION 39-2-503, MCA."

WHEREAS, in Whidden v. John S. Nerison, Inc., 1999 MT 110, 294 Mont. 346, 981 P.2d 271 (1999), the Montana Supreme Court held that the at-will employment statute, section 39-2-503, MCA, had been impliedly repealed by the Wrongful Discharge From Employment Act, Title 39, chapter 2, part 9, MCA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-2-902, MCA, is amended to read:

"39-2-902. Purpose. This part sets forth certain rights and remedies with respect to wrongful discharge. ~~Except as limited in this part, employment having no specified term may be terminated at the will of either the employer or the employee on notice to the other for any reason considered sufficient by the terminating party.~~ Except as provided in 39-2-912, this part provides the exclusive remedy for a wrongful discharge from employment."

Section 2. Section 39-2-904, MCA, is amended to read:

"39-2-904. Elements of wrongful discharge -- PRESUMPTIVE PROBATIONARY PERIOD -- ~~TEMPORARY EMPLOYMENT.~~ (1) A discharge is wrongful only if:

(1)(a) it was in retaliation for the employee's refusal to violate public policy or for reporting a violation of public policy;

1 ~~(2)(b)~~ the discharge was not for good cause and the employee had completed the employer's
2 probationary period of employment; or

3 ~~(3)(c)~~ the employer violated the express provisions of its own written personnel policy.

4 (2) (A) ~~During a probationary period of employment established by the employer, the employment~~
5 ~~may be terminated at the will of either the employer or the employee on notice to the other for any reason~~
6 ~~considered sufficient by the terminating party OR FOR NO REASON.~~

7 ~~(B) EXCEPT AS PROVIDED IN SUBSECTION (2)(C), IF AN EMPLOYER DOES NOT ESTABLISH A SPECIFIC~~
8 ~~PROBATIONARY PERIOD OR PROVIDE THAT THERE IS NO PROBATIONARY PERIOD PRIOR TO OR AT THE TIME OF HIRE, THERE~~
9 ~~IS A PROBATIONARY PERIOD MUST BE THE LONGER OF 12 OF 6 MONTHS OR 2,080 HOURS WORKED FROM THE DATE OF~~
10 ~~HIRE.~~

11 ~~(C) AN EMPLOYEE WHO IS HIRED ON A TEMPORARY BASIS FOR A SPECIFIC ASSIGNMENT OR PROJECT IS PRESUMED~~
12 ~~TO BE A PROBATIONARY EMPLOYEE FOR THE ENTIRE PERIOD OF THE TEMPORARY ASSIGNMENT OR PROJECT. THIS~~
13 ~~PRESUMPTION MAY BE OVERCOME BY EVIDENCE OF A CONTRACT OR EMPLOYER POLICY APPLICABLE TO THE EMPLOYEE THAT~~
14 ~~INDICATES A DIFFERENT STATUS."~~

15
16 **Section 3.** Section 39-2-905, MCA, is amended to read:

17 **"39-2-905. Remedies.** (1) If an employer has committed a wrongful discharge, the employee may
18 be awarded lost wages and fringe benefits for a period not to exceed 4 years from the date of discharge,
19 together with interest ~~thereon~~ on the lost wages and fringe benefits. Interim earnings, including amounts
20 the employee could have earned with reasonable diligence, must be deducted from the amount awarded
21 for lost wages. Before interim earnings are deducted from lost wages, there must be deducted from the
22 interim earnings any reasonable amounts expended by the employee in searching for, obtaining, or
23 relocating to new employment.

24 (2) The employee may recover punitive damages otherwise allowed by law if it is established by
25 clear and convincing evidence that the employer engaged in actual fraud or actual malice in the discharge
26 of the employee in violation of 39-2-904(1)(a).

27 (3) There is no right under any legal theory to damages for wrongful discharge under this part for
28 pain and suffering, emotional distress, compensatory damages, punitive damages, or any other form of
29 damages, except as provided for in subsections (1) and (2)."

